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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 918

HARRY WEINSTEIN,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

THOS. W. RUFFIN,
Counsel for Petitioner.

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THE STATE OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

Summary

Your petitioner, Harry Weinstein, petitions this Honorable Court for a writ of certiorari to issue to the Supreme Court of North Carolina, and would respectfully show:

That your petitioner was indicted in the Superior Court of Wake County, North Carolina, under a bill of indictment as appears in the record (R. 2) charging the crime of larceny of waste paper of the value of more than Fifty Dollars ($50.00), and second, the crime of receiving said stolen paper, knowing it to have been stolen, also of the value of more than Fifty Dollars ($50.00), both felonies under the laws of North Carolina. That your petitioner

was tried at the April Term, 1944, of the Wake County, North Carolina, Superior Court and convicted on both counts. That the petitioner was thereupon sentenced by the Court to serve not less than three nor more than five years in the State's Prison (R. 6). Your petitioner appealed to the North Carolina Supreme Court, which Court affirmed the judgment of the Superior Court.

Federal Question Involved

It is the contention of the petitioner that he has been convicted and sentenced to prison for a crime that in fact was not committed and on insufficient evidence and that the judgment of the State Court accordingly has deprived him of his liberty without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States which briefly provides: "Nor shall any State deprive any person of life, liberty, or property without due process of law." Your petitioner accordingly deems it essential and necessary to briefly state the evidence by which he was convicted.

The evidence discloses that the Junior Chamber of Commerce, a public organization of Raleigh, scheduled a scrap paper drive for the purpose of collecting waste paper, for Sunday, February 20, 1944. The drive was much advertised in newspapers and by radio. The citizens of Raleigh were asked to collect their waste paper in bundles and place it in front of their houses not later than 1:00 p. m., Sunday, for the purpose of having the paper collected by the City Sanitary trucks, the City having agreed to collect the paper for the Junior Chamber of Commerce. It rained Sunday morning and the Junior Chamber of Commerce decided at the last minute to call off the drive. The collection of paper was scheduled to begin at 1:00 p. m. and end at 5:00 p. m. No notice of the postponement of the drive

to the following Monday at 1:00 p. m. was given except by spot flashes or intermittent announcements of the postponement of the drive until Monday over the two radio stations in the City of Raleigh. There is no evidence whatever that the defendant, Weinstein, heard of the postponement of the drive. That State's witness, G. A. Moore, testified (R. 17), "I don't know of my own personal knowledge that Mr. Weinstein ever got any notice of the flash over the radio. It was in the paper Monday morning; it wasn't there Sunday."

The defendant, Harry Weinstein, is a duly licensed junk dealer and has been engaged in the collection of scrap paper at all times for years before this particular drive scheduled for Sunday, February 20, 1944. The State's witness, G. A. Moore, testified (R. 8) that he had asked the local scrap dealers in Raleigh to give him prices on scrap paper and that Weinstein gave him a price of $9.00 per ton. On cross-examination this same witness testified (R. 17), "I know Mr. Weinstein collects scrap paper, etc. He is in that regular business." And again (R. 18), "I think to my knowledge Mr. Weinstein has been in the scrap paper and junk business at least five or six years." It also appears from the evidence that the defendant, Weinstein, owned four trucks and that he had four negro drivers operating the trucks and collecting scrap paper on a commission basis. The negroes were paid so much per ton or pound for the paper and were allowed to collect paper when and where they pleased (see evidence of Deputy Sheriff C. L. Haynes, R. 26). Mr. Haynes testified that at the request of Mr. G. A. Moore, Jr., President of the Junior Chamber of Commerce, he telephoned the defendant, Weinstein, on Monday about 10:00 a. m. and told him that it was reported that he was collecting this paper that was put out for the Junior Chamber of Commerce drive and that Weinstein said that he was not. He

also said that the orange truck that was accused of collecting some of the paper Monday morning was not his. He said he did not know where his negro drivers got the paper. He said he did not know anything about the negroes getting the paper that might have belonged to the Junior Chamber of Commerce.

The State's witness, G. A. Moore, was allowed to testify over the objection of the defendant (R. 9, 10, 11 and 12) that he rode over the greater part of the Hayes Barton section of the city, down St. Mary's Street and most of the area from St. Mary's Street to Glenwood Avenue and down Hillsboro Street as far as State College; also over Blount Street and Person Street and then back through Peace Street into St. Mary's Street. This was on Sunday afternoon. The witness was allowed, over the objection of the defendant, to testify that on Sunday afternoon he saw between 60,000 and 75,000 pounds of paper put out on the curb and then the witness was allowed to testify over the objection of the defendant, that the paper that he saw on Sunday afternoon was not there on Monday morning. And the witness was further allowed to testify, over the objection of the defendant, that in his opinion between 40,000 and 50,000 pounds of paper was missing Monday morning. On cross-examination (R. 17) this witness testified: "We charge him (the defendant) with every bundle of paper that I saw in Hayes Barton on Sunday afternoon that I didn't see Monday morning." The Court's attention is called to the fact that there is not a scintilla of evidence to the effect that Weinstein's trucks or drivers were seen collecting any paper in the Hayes Barton area described by the witness, Moore, between the time of his first inspection on Sunday afternoon and his second inspection on Monday morning. And also there is no evidence whatever that the defendant aided or abetted or advised or procured the negro truck drivers to collect

this paper. The truck drivers were in Court as State's witnesses but were not called upon to testify or tendered for examination by counsel for defendant.

This same witness, G. A. Moore, testified (R. 14 and 15) that on Monday he went out to Weinstein's warehouse and place of business in the Caraleigh section and looked at paper in the warehouse. Over the defendant's objection, the witness, Moore, was allowed to testify that in his opinion 1,000 pounds of bundled paper was in the warehouse. The State's witness, Officer Maddry, over the objection of the defendant, was allowed to testify (R. 33) as to how many bales of paper there were in the warehouse.

State's witness, Officer Gay, over the defendant's objection, was allowed to testify (R. 45 and 46) that he inspected the defendant's warehouse and that in his opinion there was 15,000 pounds of paper in the warehouse and then testified that he didn't have the slightest idea where all the paper came from.

There was other evidence that the witness, Moore, in company with police officers of the City of Raleigh, went out to the defendant's place of business in Caraleigh on Monday morning after the State's witness, G. A. Moore, had telephoned the defendant, Weinstein, and told him that one of his trucks was picking up paper on White Oak Road, all of which was denied by the defendant (R. 12). And Police Officer Maddry told Weinstein that he understood that some of his trucks were collecting Junior Chamber of Commerce paper and that Weinstein replied that he did not know where the trucks were or whether they were collecting the paper or not. That these same witnesses went back to Weinstein's place of business later and that Weinstein told them that one truck had come in and exhibited to them a receipt for 1,300 pounds of paper taken from the negro driver. That they asked to see where the truck was unloaded and that Weinstein gave

them wrong directions, according to their statement, but later carried them to the place where the paper was unloaded and also showed them over his warehouse.

The State's witness, D. A. Gay, police Officer of the City of Raleigh, testified (R. 43) that about ten o'clock Monday morning he found a red truck broken down between Blount and Person Streets with 1,600 pounds of paper loaded on it and further testified that he took some magazines off of that truck, which had been identified by other witnesses as magazines which they had placed out for the scrap drive. This same witness later testified (R. 43) that the owner of the red truck was Harry Weinstein, the defendant. This same witness, in his first statement (R. 41) testified that the driver of the truck was a colored man named Albert Williams. Albert Williams was in the courtroom. The State did not offer his evidence. The Court's attention is called to the fact that this load of paper was never received by the defendant but confiscated by the police.

Jurisdiction

This Court has jurisdiction to review the opinion of the Supreme Court of North Carolina for the reason that it involves a federal question, to wit:

1. The petitioner contends that he has been convicted of two crimes, amounting to felonies, which crimes were not in fact committed, and sentenced to prison by the Courts of North Carolina, all on insufficient evidence in contravention of the Fourteenth Amendment of the Constitution of the United States, providing in effect that no person shall be deprived of his liberty, etc., without due process of law.

The foregoing proposition of law was duly presented to the Superior Court and also the North Carolina Supreme Court by motions for judgment as of non-suit (R. 81)

but denied in both the Superior Court and on appeal in the Supreme Court. It is not open to your petitioner to file a petition to rehear in the North Carolina Supreme Court. (See Clerk's Certificate, Record page 96.)

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be allowed and that the writ be granted to review the judgment and opinion of the Supreme Court of North Carolina; and your petitioner will ever pray.

THOS. W. RUFFIN,
Raleigh, North Carolina,
Attorney for Petitioner,
Harry Weinstein.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The opinion of the Supreme Court of North Carolina sought to be reviewed is reported in 224 N. C., page 645; 31 S. E. 2d 920, and appears in the record filed herein beginning on page 84 and continuing through page 90, inclusive.

Jurisdiction

Petitioner contends that under the Fourteenth Amendment to the Constitution of the United States, which in effect provides that no person shall be deprived of his life, liberty or property without due process of law, he is entitled to have the opinion of the North Carolina Supreme Court reviewed on the grounds that he has been convicted and sentenced to prison:

1. For a crime that was in fact not committed.
2. On the grounds of insufficient evidence.

1. No Crime Was Committed As Charged in the Bill of Indictment

The bill of indictment (R. 2) charges the petitioner with larceny of waste paper of the value of more than Fifty Dollars ($50.00) and the receiving of the same knowing it to have been stolen from the Junior Chamber of Commerce, alleged donee and owner. If the Junior Chamber of Commerce did not own the paper, then the petitioner was wrongfully convicted of the theft of the paper from said organization and also of the charge of receiving the same. In the case at bar Justice Devin, writing for the Court, lays down this phase of the law in the opinion:

> "It is true the allegation of *ownership* of property described in the bill of indictment must be proven

> substantially as laid, else a fatal variance would result and this would be available on a motion of nonsuit."
>
> *State* v. *Weinstein*, 224 N. C. 645, 31 S. E. 2d 920.

The petitioner contends that the title to the paper had not passed at the time of the alleged theft, from the various citizens donating the same to the Junior Chamber of Commerce, alleged donee. The evidence is that people of Raleigh were requested by the Junior Chamber of Commerce to donate or give scrap paper to this organization. The paper was placed in bundles on the curb adjacent to the various homes in the city. Now comes the question is this a sufficient constructive delivery of the gift? The petitioner contends that it is not. Any citizen could have decided to send the magazines to an Army camp or made some other disposition of the same and could have moved the paper back into his or her home. The petitioner contends that the people had not completely surrendered the bundles or relinquished control over them. Again in the opinion of the North Carolina Supreme Court in the case at bar it is said:

> "In order to pass title there must have been both an intention to give and a delivery. While the delivery may be actual or constructive, the donor's surrender of the property must be complete and his control relinquished."
>
> *State* v. *Weinstein*, 224 N. C. 645, 31 S. E. 2d 920.

It is the contention of the petitioner that the various citizens of the city had and retained control of the bundles of paper until they were actually picked up by the drivers of city trucks, the agents designated to collect the paper. If this be true, then the Junior Chamber of Commerce did not own the paper at the time of the alleged theft for the reason that title had not passed to the organization. At

most, the placing of the bundles on the curb by various people to be collected in the *future,* at a later hour or date, was only a promise to give. This is not sufficient to pass title.

> "A gift cannot be made to take effect in the future. This amounts only to a *promise* or an agreement to make a gift. An intention of the donor to give is not alone sufficient. The intention must be executed by a *complete* and *unconditional* delivery. The transaction must show a completely executed transfer to the donee of the present right of property and the possession."
>
> *Thomas* v. *Houston,* 181 N. C. 91.

No title to the paper passed to the Junior Chamber of Commerce; the Junior Chamber of Commerce did not own the paper as alleged in the bill of indictment; there was a fatal variance between the charge and the evidence and no crime was committed. This fact brings this case clearly within the jurisdiction of the Supreme Court of the United States under the due process clause of the Fourteenth Amendment to the Constitution. The following authorities are in point.

> "To sustain a conviction on the ground that the evidence supports a charge not made would be a sheer denial of due process."
>
> *Thornhill* v. *The State of Alabama,* 310 U. S. 88-106, 84 Law. Ed. 1093;
>
> *Jonge* v. *The State of Oregon,* 299 U. S. 353-366, 81 Law. Ed. 278.

2. The Petitioner Was Convicted and Sentenced On Totally Insufficient Evidence

In this connection the Supreme Court of the United States has held:

> "A question of law arising out of the contention that there was no evidence whatever to support a finding

of fact as the result of which a Federal Right was denied is open to review in the Federal Supreme Court on a writ of error to a State Court, if the evidence is in the record."

Creswill v. *Grand Lodge K. of P.*, 225 U. S. 246, 32 Sup. Ct. Rep. 822.

And again:

"In determining the legal effect of certain facts as a deprivation of one's legal rights under the Fourteenth Amendment, the Supreme Court is at full liberty to consider the facts as was the State Supreme Court."

Truax v. *Corrigan*, 257 U. S. 312, 42 Sup. Ct. Rep. 124.

The adjudication of the Federal question was necessarily involved in the disposition of this case in the State Court and was certainly raised by implication, the entire defense being based on the contentions, first, that no crime had been committed and second, that the evidence was totally lacking in support of the crimes charged in the bill. With reference to this phase of the matter, the Supreme Court has held:

"It is not always necessary that the Federal question should appear affirmatively on the record or in the opinion, in order to give the Supreme Court of the United States jurisdiction to review a State judgment, if an adjudication of such question was necessarily involved in the disposition of the case in the State Court."

Kaukauna Water Power Co. v. *Green Bay & M. Canal Co.*, 142 U. S. 254, 12 Sup. Ct. Rep. 173.

In support of this proposition of law the petitioner desires to present the following discussion of the evidence and the North Carolina law pertinent thereto.

The Evidence on the Larceny Count Is Clearly Insufficient

The evidence is that any paper stolen was taken by one or all of the four negro truck drivers who were working for the petitioner on a commission basis, collecting paper where and when they pleased, delivering it to the petitioner, and being paid so much per pound upon delivery (R. 26). There is not a scintilla of evidence that the petitioner was present at the time of the alleged theft, participating, aiding or abetting, or that he advised or procured the commission of the alleged crime. The negro truck drivers were present in Court as State's witnesses but the State refused to offer or tender their testimony, thus leaving the evidence as to the alleged participation of the petitioner in the crime of larceny as silent as the tombs of Egypt. In the opinion of the Court in the case at bar, it is stated, "The testimony does not show that the defendant personally participated in the taking or removal of any of the property." The motion for judgment as of non-suit on this count should have been allowed and the count stricken from the bill. The North Carolina Supreme Court has consistently held this to be the law, quoting:

> "In order to convict a defendant of larceny when the evidence discloses that he was not present at the commission of the crime, it is necessary to prove that the defendant either advised or procured the commission of the crime or aided or abetted in the commission."
>
> *State* v. *King*, 222 N. C. 239; 22 S. E. 2d 445
>
> "Where the State's evidence tends to show the actual theft of the goods in question by others and fails to connect the defendant therewith in any manner until after the goods had been asported, the *presumption* arising from the defendant's recent possession of

goods a short time thereafter is *insufficient* to justify the submission of the question of the defendant's guilt of larceny to the jury."

State v. *King*, 222 N. C. 239; 22 S. E. 2d 445
State v. *Cannon*, 218 N. C. 466; 11 S. E. 2d 301

Likewise, the Evidence on the Receiving Count Is Insufficient, Particularly As to the Value of the Property

The Supreme Court of North Carolina held in its opinion in this case (R. 88), quoting:

"It was necessary for the State to show the value of the property taken or *received* to be more than $50.00. in order to establish the commission of a felony under the statute as charged in the bill of indictment. G. S. 14-72."

The evidence as to the ton price of the paper involved is that it was worth $14.00 per ton (2,000 lbs.) (R. 16). The only paper actually identified in the possession of the petitioner were eight magazines weighing probably less than two pounds (R. 44). It is true that the various witnesses were allowed to testify as to the large number of pounds of paper that the petitioner had in his warehouse and the jury was allowed to guess that the petitioner had stolen or received all of this paper as stolen paper. This was done over the objection of the petitioner and the petitioner contends that this incompetent evidence supplied the totally insufficient evidence of the State as to the value of the paper alleged to have been received. The witness D. A. Gay testified (R. 43) that he found a red truck of the petitioner broken down on Blount Street in Raleigh, loaded with about 1600 pounds of paper from which he extracted several magazines identified by various citizens as having been placed by them on the curb for the paper drive. The value of this paper could not have

been more than $14.00, assuming that all of it was stolen paper. And the Court's attention is called to the fact that the petitioner never *received* this truck load of paper. The deficiency of the State's evidence as to the value of the paper alleged to have been received was further supplied by the incompetent evidence of the witness G. A. Moore (R. 9 through 11 inclusive). Over the objection of the petitioner, this witness was allowed to testify that on Sunday afternoon he made a survey of the Hayes Barton area of the city and saw 60,000 to 75,000 pounds of paper on the street, that he made another inspection Monday morning and that the paper was missing. Witness testified on cross-examination (R. 17) that he charged Weinstein with the theft of all of this paper and at the same time admitted that the paper drive had been postponed from Sunday at 1:00 p. m. to Monday at 1:00 p. m. on account of rain and that the people were notified by spot flashes over the radio. Naturally many people carried the bundles of paper back into their houses to prevent its ruin by rain. This witness was simply allowed to guess that the petitioner and/or the negro truck drivers stole all of this paper and that the petitioner received all of it, knowing it to be stolen property. Many other witnesses, as the record shows, were allowed to give similar incompetent evidence. The State failed utterly to prove by competent evidence the value of the allegedly stolen paper allegedly received by the petitioner to be more than $50.00. And the petitioner respectfully contends that for this reason his motion for judgment as of non-suit as to this count should have been allowed and the case dismissed.

Conclusion

Briefly posed, the question is: Has the petitioner been denied his rights under the due process clause of the Four-

teenth Amendment to the Constitution of the United States? For the reasons above set forth the petitioner respectfully contends that the answer should be in the affirmative.

Respectfully submitted,

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Attorney for Petitioner.

(6270)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

HARRY WEINSTEIN,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA,

Respondent.

BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT, OPPOSING PETITION FOR WRIT OF *CERTIORARI*

STATEMENT OF THE CASE

The petitioner, Harry Weinstein, seeks by writ of *certiorari* to have the United States Supreme Court review the decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Wake County imposing sentence upon the petitioner for larceny and for receiving stolen property knowing it to have been stolen. The opinion of the Supreme Court of North Carolina was filed November 22, 1944, and is reported as ***State v. Harry Weinstein***, 224 N.C. 645.

FACTS

The petitioner was charged with larceny of a quantity of waste paper of the value of three hundred twenty-five dollars, the property of the Raleigh Junior Chamber of Commerce, Inc. A second count in the bill of indictment charged him with receiving said property knowing it to have been stolen.

The State offered evidence tending to show that the Raleigh Junior Chamber of Commerce scheduled a scrap drive for Sunday, February 20, 1944, and that much publicity had been given this drive. The scrap paper was donated by the various citizens of Raleigh to the Raleigh Junior Chamber of Commerce and was to be gathered by the city trucks from the residences and business houses of the city. On the date scheduled for the particular drive in question, the weather was such as to make it advisable to postpone gathering the scrap paper until the next day.

An announcement to this effect was made over both radio stations in Raleigh and the collection of the scrap paper by the city trucks was actually begun at one o'clock on Monday, February 21, 1944. Prior to the time the decision was reached to postpone the collection of the scrap paper until the next day, various citizens of Raleigh had placed bundles of scrap paper in front of their houses and places of business so that the city trucks might pick it up without undue effort. The major portion of the scrap paper in certain sections of the city of Raleigh disappeared between the time it was placed in convenient locations on Sunday and the time it was supposed to be picked up by the city trucks on Monday.

While the scrap drive was being advertised in the newspapers, the petitioner Weinstein contacted the advertising manager of The Raleigh Times and undertook to buy the space under the ad advertising the scrap drive. The advertisement he desired to place below the scrap drive ad was to the effect that the citizens of Raleigh should not give away their scrap paper but should sell it to him. When the petitioner was informed that he would not be allowed to place his ad in the desired place, he went on a tirade and said

that the paper put out on the street belonged to anybody and that, drive or no drive, he was going to get his share of it. Trucks belonging to the petitioner were seen gathering paper in the sections of the city where the paper belonging to the Junior Chamber of Commerce disappeared. On Monday, February 21, between 9:15 and 9:30 a. m., the petitioner Weinstein was contacted and advised that his trucks had been picking up the paper belonging to the Junior Chamber of Commerce and, upon being advised not to unload one certain truck when it reached his place of business, he agreed that it would not be unloaded. Thereafter, several persons interested in the scrap drive went to see Mr. Weinstein and he was again informed that his trucks were out collecting Junior Chamber of Commerce paper and later when Weinstein was asked if any of the trucks had come in, he answered that one had come in. Upon being asked where the truck and paper was, he directed the inquirers to go to a certain place where they would find the paper that came in the truck. Upon reaching the point designated by Weinstein, nothing was found and it clearly appeared that Weinstein had purposely misdirected the persons who had made the inquiries. Weinstein was thereafter confronted with these facts and finally directed the representatives of the Junior Chamber of Commerce to where the paper was actually found in his possession. Various bundles of the paper were identified by the persons who had donated same to the Junior Chamber of Commerce. Some of the scrap paper had already been loaded in a railroad car preparatory to being shipped by the petitioner Weinstein.

The jury found the petitioner guilty, and this conviction was affirmed by the Supreme Court of North Carolina.

ARGUMENT

I

THE SUFFICIENCY OF THE EVIDENCE TO BE SUBMITTED TO THE JURY PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

When a state court judicially determines that there is sufficient evidence of a fact to be submitted to a jury, its decision is not reviewable by the United States Supreme Court on writ of *certiorari*.

Baldwin v. Kansas, 129 U.S. 52;
Noble v. Mitchell, 164 U.S. 367;
American Railway Exp. Co. v. Kentucky, 273 U.S. 269;
Bell Telephone Co. v. Pennsylvania Public Utility Commission, 309 U.S. 30.

In *Baldwin v. Kansas*, 129 U.S. 52, a capital case in which a writ of error was dismissed for want of jurisdiction, the court said:

> "The question whether the evidence in the case was sufficient to justify the verdict of the jury, and the question whether the Constitution of the State of Kansas was complied with or not in the proceedings on the trial which are challenged, are not federal questions which this court can review."

In *Noble v. Mitchell*, 164 U.S. 367, 373, Mr. Justice White says:

> "It is suggested that there is no adequate proof that the policy in controversy was issued by a foreign corporation. This involves a mere question of fact, which was submitted to the jury by the trial court, and as to which the Supreme Court of Alabama said there was evidence sufficient for the consideration of the jury, and which is not subject to review here on writ of error. *Dower v. Richards*, 151 U.S. 659 (38:306); *Re Buchanan*, 158 U.S. 31 (39:884)."

II

THE SUPREME COURT IS WITHOUT JURISDICTION TO GRANT THE WRIT OF *CERTIORARI*, FOR THE PETI-

TIONER FAILED TO SET UP A CLAIM OF RIGHTS, PRIVILEGES, OR IMMUNITIES UNDER THE CONSTITUTION OF THE UNITED STATES IN THE STATE COURTS.

Although an attempt has been made to show that the question set out in the Petition for writ of *certiorari* is not a federal question or is not of sufficient substance and importance to justify the allowance of the writ, the State of North Carolina also contends that this Court is without jurisdiction to allow the petition, for the petitioner failed to set up this question *as a question arising under the Constitution of the United States* in the State courts.

Careful examination of the record will show that, although the petitioner took exceptions to alleged errors of law, he failed entirely to set up specially any rights, privileges, or immunities claimed under the Constitution of the United States in either the trial court or the Supreme Court of North Carolina. The opinion of the Supreme Court of North Carolina treats the exceptions taken by the petitioner as raising questions of State law only. No federal questions are mentioned. The Petition for writ of *certiorari* filed in this Court omits any allegation that federal questions were set up as such in the State courts.

Under the statute authorizing review by *certiorari* of decisions of the highest courts of the several states, jurisdiction of the United States Supreme Court to review decisions alleged to involve rights, privileges, or immunities under the Constitution is limited to cases in which the rights, privileges, or immunities are "specially set up or claimed."

28 U.S.C. 1940 ed., Sec. 344

The rights, privileges, or immunities must be set up in the state courts.

Brooks v. Missouri, 124 U.S. 394;
Baldwin v. Kansas, 129 U.S. 52;
Hartford Life Ins. Co. v. Johnson, 249 U.S. 490.

CONCLUSION

The question set out in the petition is not a federal question, or, if it is, the question is not substantial and is not of sufficient importance to warrant consideration by the United States Supreme Court. The question was not set up in the State courts as a question arising under the Constitution of the United States. Therefore, the writ of *certiorari* should be denied.

Respectfully submitted,

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THE GRAPHIC PRESS, INC., RALEIGH, N. C.